(ii) Prior to each firing event, the aircraft crew will conduct a visual and/or instrument survey of the 5-nm (9.3-km) wide prospective target area to locate any marine mammals that may be present.

(A) The AC–130 gunship will conduct at least two complete orbits at a minimum safe airspeed around a prospective target area at an altitude of approximately 6,000 ft (1,829 m).

(B) If marine mammals are not detected, the AC–130 can then continue orbiting the selected target point as it climbs to the mission testing altitude.

(C) During the low altitude orbits and the climb to testing altitude, aircraft crew will scan the sea surface within the aircraft's orbit circle for the presence of marine mammals.

(D) The AC–130's optical and electronic sensors must be employed for target detection, especially at night when visibility will be poor.

(E) If any marine mammals are detected within the AC–130's orbit circle, either during initial clearance or after commencement of live firing, the mission will be immediately halted and relocated as necessary or suspended until the marine mammal has left the area. If relocated to another target area, the clearance procedures described in paragraph (c)(2)(ii) of this section must be repeated.

(F) If multiple firing events occur within the same flight, these clearance procedures must precede each event.

(iii) If no marine mammals are detected, gunnery exercises may begin with the deployment of MK–25 flares into the center of the designated 5-nm target area.

(3) Operational Mitigation Measures:

(i) Ramp-up air-to-surface gunnery firing activities by beginning with the lowest caliber monition and proceeding to the highest, which means the munitions would be fired in the following order: 25 mm; 40 mm; and 105 mm.

(ii) Air-to-surface gunnery exercises conducted after sunset must use the 105-mm training round instead of the 105-mm full up round.

(iii) One mission per year may be conducted beyond the 200 m isobaths, which is south of a line delineating the shelf break with coordinates of29°42.73′ N, 86°48.27′ W and 29°12.73′ N, 85°59.88′ W (Figure 1–12 in Eglin AFB's LOA application). The single mission beyond the shelf break will occur during daylight hours only.

(4) Post-mission Monitoring:

(i) Aircrews will initiate the post-mission clearance procedures beginning at the operational altitude of approximately 15,000 to 20,000 ft (4572 to 6096 m) elevation, and then initiate a spiraling descent down to an observation altitude of approximately 6,000 ft (1,829 m) elevation. Rates of descent will occur over a 3- to 5-minute time frame.

(ii) If post-detonation surveys determine that an injury or lethal take of a marine mammal has occurred, the test procedure and the monitoring methods must be reviewed with the National Marine Fisheries Service and appropriate changes to avoid unauthorized take must be made, prior to conducting the next air-to-surface gunnery exercise.

§ 217.115 Requirements for monitoring and reporting.

(a) The Holder of the Letter of Authorization issued pursuant to §§ 216.106 and 217.117 of this chapter for activities described in § 217.110(c) is required to conduct the monitoring and reporting measures specified in this section and § 217.114 and any additional monitoring measures contained in the Letter of Authorization.

(b) The Holder of the Letter of Authorization is required to cooperate with the National Marine Fisheries Service, and any other Federal, state or local agency monitoring the impacts of the activity on marine mammals. Unless specified otherwise in the Letter of Authorization, the Holder of the Letter of Authorization must notify the Director, Office of Protected Resources, National Marine Fisheries Service, or designee, by letter or telephone (301–427–8401), at least 2 weeks prior to any modification to the activity identified in § 217.110(c) that has the potential to result in the serious injury, mortality or Level A or Level B harassment of a marine mammal that was not identified and addressed previously.

(c) Monitoring Procedures for PSW Missions:

(1) The Holder of this Authorization must:

(i) Designate qualified on-site individual(s) to record the effects of mission launches on marine mammals that inhabit the northern Gulf of Mexico;

(ii) Have on-site individuals, approved in advance by the National Marine Fisheries Service, to conduct the mitigation, monitoring and reporting activities specified in this subpart and in the Letter of Authorization issued pursuant to §§ 216.106 and 217.117 of this chapter.

(iii) Conduct aerial surveys to reduce impacts on protected species. The aerial survey/monitoring team will consist of two experienced marine mammal observers, approved in advance by the Southeast Region, National Marine Fisheries Service. The aircraft will also have a data recorder who would be responsible for relaying the location, the species if possible, the direction of movement, and the number of animals sighted.

(iv) Conduct shipboard monitoring to reduce impacts to protected species. Trained observers will conduct monitoring from the highest point possible on each mission or support vessel(s). The observer on the vessel must be equipped with optical equipment with sufficient magnification (e.g., 25x power ''Big-Eye'' binoculars).

(2) The aerial and shipboard monitoring teams will maintain proper lines of communication to avoid communication deficiencies. The observers from the aerial team and operations vessel will have direct communication with the lead scientist aboard the operations vessel.

(3) Pre-mission Monitoring: Approximately 5 hours prior to the mission, or at daybreak, the appropriate vessel(s) would be on-site in the primary test site near the location of the earliest planned mission point. Observers onboard the vessel will assess the suitability of the test site, based on visual observation of marine mammals and sea turtles, the presence of large Sargassum mats, seabirds and jellyfish aggregations and overall environmental conditions (visibility, sea state, etc.). This information will be relayed to the lead scientist.

(4) Three Hours Prior to Mission:

(i) Approximately three hours prior to the mission launch, aerial monitoring will commence within the test site to evaluate the test site for environmental suitability. Evaluation of the entire test site would take approximately 1 to 1.5 hours. The aerial monitoring team will begin monitoring the safety zone and buffer zone around the target area.

(ii) Shipboard observers will monitor the safety and buffer zone, and the lead scientist will enter all marine mammals and sea turtle sightings, including the time of sighting and the direction of travel, into a marine animal tracking and sighting database.

(5) One to 1.5 Hours Prior to Mission Launch:

(i) Depending upon the mission, aerial and shipboard viewers will be instructed to leave the area and remain outside the safety area. The aerial team will report all marine animals spotted and their directions of travel to the lead scientist onboard the vessel.

(ii) The shipboard monitoring team will continue searching the buffer zone for protected species as it leaves the safety zone. The surface vessels will continue to monitor from outside of the safety area until after impact.

(6) Post-mission monitoring:

(i) The vessels will move into the safety zone from outside the safety zone and continue monitoring for at least two hours, concentrating on the area down current of the test site.

(ii) The holder of the Letter of Authorization will closely coordinate mission launches with marine animal stranding networks.

(iii) The monitoring team will document any dead or injured marine mammals or turtles and, if practicable, recover and examine any dead animals.

(d) Monitoring Procedures for A–S Gunnery Missions:

(1) In addition to the monitoring requirements in 217.114(c), the holder of the Letter of Authorization must:

(i) Cooperate with the National Marine Fisheries Service and any other Federal, state or local agency monitoring the impacts of the activity on marine mammals.

(ii) Require aircrews to initiate the post-mission clearance procedures beginning at the operational altitude of approximately 15,000 to 20,000 ft (4572 to 6096 m) elevation, and then initiate a spiraling descent down to an observation altitude of approximately 6,000 ft (1,829 m) elevation. Rates of descent will occur over a 3- to 5-minute time frame.

(iii) Track their use of the EGTTR for test firing missions and marine mammal observations, through the use of mission reporting forms.

(iv) Coordinate air-to-surface gunnery exercises with future flight activities to provide supplemental post-mission observations of marine mammals in the operations area of the exercise.

(2) [Reserved]

(e) In accordance with provisions in §217.118(b)(2), the Holder of the Letter of Authorization must conduct the research required under the Letter of Authorization.

(f) Reporting:

(1) Unless specified otherwise in the Letter of Authorization, the Holder of the Letter of Authorization must conduct all of the monitoring and reporting required under the LOA and submit an annual report to the Director, Office of Protected Resources, National Marine Fisheries Service by a date certain specified in the LOA. This report must include the following information:

(i) Date and time of each PSW/air-to-surface gunnery exercise;

(ii) A complete description of the pre-exercise and post-exercise activities related to mitigating and monitoring the effects of PSW/air-to-surface gunnery exercises on marine mammal populations;

(iii) Results of the monitoring program, including numbers by species/stock of any marine mammals noted injured or killed as a result of the training exercises and number of marine mammals (by species if possible) that may have been harassed due to presence within the applicable safety zone;

(iv) A detailed assessment of the effectiveness of sensor-based monitoring in detecting marine mammals in the area of air-to-surface gunnery operations; and

(v) Results of coordination with coastal marine mammal stranding networks.

(2) The final comprehensive report on all marine mammal monitoring and research conducted during the applicability period of this subpart must be submitted to the Director, Office of Protected Resources, National Marine Fisheries Service at least 240 days prior to expiration of applicability of this subpart or 240 days after the expiration of applicability of this subpart if new regulations will not be requested.

§217.116 Applications for Letters of Authorization.

To incidentally take marine mammals pursuant to this subpart, the U.S. citizen (as defined at §216.103 of this chapter) conducting the activities identified in §217.110(c) must apply for and obtain either an initial Letter of Authorization in accordance with §§216.106 and 217.117 of this chapter or a renewal under §217.118.

§217.117 Letters of Authorization.

(a) A Letter of Authorization, unless suspended or revoked, will be valid for a period of time not to exceed the period of validity of this subpart.

(b) Each Letter of Authorization will set forth:

(1) Permissible methods of incidental taking;

(2) Means of effecting the least practicable adverse impact on the species, its habitat, and on the availability of the species for subsistence uses; and

(3) Requirements for monitoring and reporting.

(c) Issuance and renewal of the Letter of Authorization will be based on a determination that the total number of marine mammals taken by the activity as a whole will have no more than a negligible impact on the species or stock of affected marine mammals.

§217.118 Renewals and Modifications of Letters of Authorization.

(a) A Letter of Authorization issued under §216.106 and §217.117 of this chapter for the activities identified in §217.110(c) will be renewed or modified upon request of the applicant, provided that: